

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

Willie E. Gordon, #103101,

Plaintiff,

v.

Jon Ozmint, Mark Sanford, Warden Pate,  
Major Newton, Ms. Singleton, Capt. Smith,  
Dexter Pinkston, Thomas Chaney,  
Ms. Kathy Hudson,

Defendants.

Civil Action No.8:10-1553-MBS-BHH

**ORDER**

The Plaintiff Willie E. Gordon brought this action alleging civil rights violations pursuant to 42 U.S.C. § 1983. This matter is before the Court on the Plaintiff's motion to compel discovery (Dkt. # 42) and the Defendants' motion for a protective order (Dkt. # 47).

On December 6, 2010, the Plaintiff filed a motion to compel because he has not received any responses to discovery requests which he served on the Defendants on September 22, 2010. The Defendants, in their response, admit that they did not respond to the Plaintiff's discovery because they had intended to file a motion for protective order simultaneously with their Answer, but "inadvertently neglected" to do so.

The Defendants request an order protecting them from discovery because one of the claims in their Motion for Summary Judgment (Dkt. # 43) is that Plaintiff failed to completely exhaust his administrative remedies prior to coming to court, pursuant to 42 U.S.C. § 1997e(a). The Plaintiff does not demonstrate that any of the requested discovery material could preclude summary judgment. See Fed.R.Civ.P. 56(f). Furthermore, the Plaintiff's motion to compel is untimely. The Plaintiff served the Defendants with his discovery requests on September 22, 2010, and their responses were due within 30 days after service, or by October 22, 2010. See Fed.R.Civ.P. 33(b)(2); 34(b)(2)(A). The Defendants did not respond. The Plaintiff filed this motion to compel December 6, 2010. However, "[a] motion to compel . . . is deemed waived if it is not filed within thirty days after the discovery response or disclosure requirement sought was due . . ." L.R.Civ.P. 37.02. Therefore, for this motion to compel to be timely, the Plaintiff would have had to have filed it by November

21, 2010, or 30 days after the Defendants' discovery responses were due. As the Plaintiff did not file until December 6, 2010, he waived this motion to compel.

Based on the foregoing, the Plaintiff's Motion to Compel (# 42) is DENIED and the Defendants' Motion for Protective Order (# 47) is GRANTED pending resolution of the Defendants' Motion for Summary Judgment.

IT IS SO ORDERED.

s/Bruce Howe Hendricks  
United States Magistrate Judge

December 15, 2010  
Greenville, South Carolina